RESERVED

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 154 OF 2003 (M/S)

Niranjan Singh Wasu ..... Petitioner.

Vs.

The District Judge,
Dehradun and others ..... Respondents.

.....

October 15 ,2004

Sri P.M.N.Singh, Senior Advocate, learned counsel for the petitioner.
Standing Counsel for the State
Sri B.P. Nautiyal, learned counsel for the respondent no.3.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for quashing of the order passed by the Court below while allowing the application under section 21(1)(a) of the U. P. Act No.13 of 1972.

Factual Aspects of the Case:

Briefly stated the respondent no.3 has filed an application for the release of the premises i.e. house no. 45/50, Jhinda Bazar,Dehradun, of which the petitioner is a tenant at the rate of Rs. 21/- per month. According to the case of the landlord, he is an Advocate having obtained the licence from the Bar Council of U.P. on 18.03.1998. He is practicing as a lawyer in civil and criminal side in the Courts at Dehradun.

The respondent no.3 has stated in his application that he is living which his mother at the first floor of the disputed

building having two bed rooms (9.5 ft. X 8 ft. each), one drawing room(19.5 ft X 8ft.), one store (9 ft. X 8 ft.), one kitchen, one toilet and balcony, being used by him and his family members for residential purposes. The landlord has also stated in hi application that he is likely to get married and he has no place to settle himself for the purposes of Advocate's Chambers and as such the premises is required for the use and occupation for the livelihood of the petitioner.

The petitioner has filed his objections. In reply to the application filed by the respondent no.3, it was stated therein that there are two shops – one is in possession of the petitioner and other is in possession of Sri Vinod Kumar as a tenant. The third shop is in possession of Bundu who is in unauthorized occupation of the premises. The petitioner has stated that the said shop is sufficient for Advocates Chamber.

Both the parties have filed their affidavits in support of their cases. On behalf of the respondent no.3, the affidavits of self, S.K.Puri, Anoop Rautela, Arun Rawat, Sunil Verma, B.K.Tandon, Shailendra Rajan, Badri Prasad Kothari and Anil Kumar Sharma were filed.

On behalf of the petitioner apart from the affidavit of self, the affidavits of Niranjan Sihgh, Nand Singh Ratan, Bipin Kumar, Ranjit Singh, Surjit Singh, Rajesh Kumar, Harbansh Lal, Beenu, Ashok Kumar, Om Prakash, Niranjan Singh, and Pancham Singh were filed. The assessment for the year 1973-1978, 1979 to 1984, 1984 to 1989, 1989 to 1994 and1994 to 1999 were also filed.

On behalf of the respondent no.3 rebuttal affidavits were also filed,namely, Sri Deepak Khanna, Smt. Kamlesh Tandon,

Zishan Ullah, S.K.Puri, Anil Kumar, Shankutla Devi, V.K.Tandon, Arun Rawat, Anoop Gairola, Sunil Verma, Badri Prasad, Shailendra Rajan, P.K.Sinha, and Smt. Shashi Khanna.

Regarding Bona fide Need:

So far as bona fide need of the respondent no.3 is concerned, the application under section 21(1)(a) was filed to the effect that at present there is no place for starting the Chamber of the respondent no3. First floor is fully occupied by the respondent no.3 for residential purposes. Paragraph 2,3 and 5 of the application are quoted below:

> "The applicant is an advocate by profession having obtained the licence from Bar Council of U.P. on 18.03.1998. Applicant is practicing as lawyer in Civil/Criminal side in the Courts of Dehradun and has purchased large number of law books and journals. Besides many senior Advocates have gifted their law books to the applicant. At present the applicant is having about one thousand books and journals.
>
> The applicant is living with his mother on the first floor of the disputed building having two bed rooms (9.5 ft. X 8 ft.each), one drawing room (19.5 ft. X 8 ft.), one store (9ft. X 8 ft.), one kitchen, toilet and balcony being used for his and his family residential accommodation. Applicant and his mother's guests also come and stay in the accommodation off and on.
>
> That at present applicant has no place for his chamber/office and library and uses his senior advocate's chamber/office and library for his practice. The applicant has kept all his books and journals in the chamber/office and library of his senior due to inadequacy of accommodation. Applicant meets his client in his senior's chambers/office and library as he has no office of his own."

In reply to the aforesaid paragraphs, it has been stated in paragraphs 4 and 6 as under:

> ''निमुक्ति प्रार्थना पत्र की चरण सं0 3 का लेख असत्य अस्वीकार है। प्राथी प्रथम तल पर अकेला निवास करता है। उसके सम्बन्ध उसकी मां से कटु है। उसकी मां अपने मायके में रहती है। प्रार्थी का तलाक हो चुका है। उसनें दूसरा विवाह नहीं करना है।

प्रथम तल पर अत्यधिक स्थान है कि जहां उसके पास कार्यालय हेतु भी स्थान है कि जो उससे पहले उसके दादा व पिता का था कि जो देहरादून के अत्यन्त प्रसिध्द मुंशी थे तथा उनके पास भिन्न भिन्न व्यक्ति परामर्श के लिये आते थे कि जिसके लिये उन्होने एक कमरे को परामर्श रूम के रूप में बनाया हुआ था। प्रार्थी को यह कार्यालय वाला स्थान उपलब्ध है। यह सभी तथ्य प्रार्थी ने छिपाये है। प्रार्थी स्वच्छ हाथों से न्यायालय के समक्ष नहीं आया है। दौरान वाद प्रार्थी ने सम्पत्ति के प्रथम तल पर स्थित परामर्श कक्ष कि जिसे उसके दादा उपयोग प्रयोग करते थे, को अपना कार्यालय बना लिया है तथा इससे उसकी तथा कथित आवश्यकता पूरी हो गयी है तथा अब उसे अतिरिक्त स्थान की आवश्यकता नहीं है।

निमुक्ति प्रार्थना पत्र की चरण सं0 5 का लेख असत्य व अस्वीकार है। प्रथम तल पर प्रार्थी के पास पर्याप्त स्थान हैं। प्रार्थी अकेला निवास करता है। उसकी माता अपने मायके मे निवास करती है। प्रार्थी अभी स्वयं जूनियर अधिवक्ता है तथा कार्य सीखने के लिये श्री मनोजीत सिन्हा एडवोकेट के कार्यालय में बैठता है। यह कहना असत्य है कि स्थानाभाव के कारण प्रार्थी ने अपनी कानूनी किताबें अपने सीनियर अधिवक्ता के कार्यालय में रखी है। यह कहना भी असत्य है कि स्थानाभाव के कारण प्रार्थी अपने व्यवहारीगण से अपने सीनियर अधिवक्ता के कार्यालय में ही मिलता है। ये सारी कहानी बनावटी है व इससे इन्कारी है।''

In fact, it has been admitted by the petitioner that the Chamber is being used on the first floor. On behalf of the respondent no.3 Sri R.K.Sinha has deposed as under:

"That the deponent was enrolled as an Advocate in 1942 and continues to be a member of Dehradun Bar.

That Late Sh. Kundan Lal Khanna and his son late Sh. Mohan Lal Khanna were Munshis of deponent.

That Late Sh. Kundan Lal Khanna and his son did not have any office or Chambers or consultation room at their residence, 45/50 Jhanda Bazar,Dehradun. Late Kundan Lal Khanna and his son Late Mohan Lal Khanna used to attend in deponent's Chamber at 7 Subhash Road, Dehradun regularly."

In replication, the respondent no.3 has stated as under:

"In reply to para 2 of the objection, it is admitted that the applicant owns a double storey building where in the ground floor there are three shops in occupation of the tenants. On the first floor applicant resides with his mother. All the shops on the ground floor are in occupation of the tenant. It is wrong that Sh. Vinod Kumar is paying very high rent. Tenant Bundu is a tenant since long and definitely before 1976. In any case applicant cannot evict him as he is protected tenant. O.P. can not dictate to the applicant as to which property he should get released. The applicant has no knowledge if the O.P. has moved an application for

getting the shop under occupation of Bundu allotted to him. O.P. has not made it clear as to what cooperation O.P. expects from the applicant to get the shop allotted."

Thus the respondent no.3 has no place for running his Chamber. It is well settled that the landlord can choose any tenant and it is not open for the petitioner to dictate as to whom the landlord is required to evict in view of the judgment of the Apex Court in the case of Smt Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC page no. 103. It has been held by the apex Court as under:-

"When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide . When other conditions of the clause are satisfied and when the landlord shows a prima facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted himself."

The District Judge has recorded the finding to the following effect:

"It has been submitted that in case the landlord needs any shop for his library and Chamber, then he must have chosen the shop either of Vinod Kumar or of Bundu for release as the shop of Bundu adjoins to the stair-case, but in this regard, it has been submitted on behalf of the landlord that the landlord is the best Judge of his requirement for residential or business purposes and has also got complete freedom in the matter and has relied upon 2000 A.L.R. S.C. page 458. He has also submitted that it is not the business of the tenant to direct the landlord to make a choice of a particular shop, but it is the choice of the landlord as to against whom, he shall file the release application."

"In my opinion, the facts of the aforesaid case are different to the present case, as in the above noted case, the portion was vacant, as is not in this case. The tenant has moved an application for allotment of the sop under possession of Bundu alleging that the same is vacant, but in the enquiry it has been held that Bundu is a tenant for more than 35 years before application of the Rent Control Act. So, the tenant has not filed any direct law in this regard. The application moved against Bundu after enquiry has been decided. The tenant has moved another application to revive the same. So, it cannot be expected that the same will be available to the landlord in near future or will be available or not, as the Enquiry Officer has found that the same is under tenancy for more than 35 years."

The respondent no.3 has stated that he requires the premises for establishment of his Chamber. This fact has been admitted by the petitioner in reply that he has started in the first floor. It is also settled that the landlord cannot be allowed to sit idle and for want of the accommodation in view of the judgment of the Apex Court in the case of Smt. Ramkubai since deceased by L.Rs. and others Vs. Hajarimal Dhokalchand Chandak and others reported in AIR 1999 SC 3089, wherein the Apex Court has held as below:

" Therefore, we do not think that taking up contractor work, in the meanwhile will militate against his carry on business of Kirana which is his family business, which was carried on by his father and is being carried on by his brother independently. The facts that the landlady during her lifetime was a partner in the firm carrying on Kirana business and her elder son is carrying on Kirana business do not disentitle Bhikchand to establish his own business.. We are not impressed by the other reasoning and conclusion of the Appellate Court which are confirmed by the High Court. In our view, none of the reasons leads to the inference that Bhikchand cannot be denied to the landlady to recovery to recover the suit premises for personal requirement of Bhikchand to establish Kirana business independently.

The only other aspect which is required to be noticed is requirement of sub section (2) of section 13 of

the Act. It enjoins the Court not to pass decree for eviction under clause (g) of sub section (1) if, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, it is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it and if the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court has to pass the decree in respect of such part only.....

We are satisfied that the present appellants have established bona fide requirement to recover the possession of the suit premises from the respondents."

In the case of Dwarkaprasad Vs. Niranjan reported in 2003 SCFBRC 351 the Apex Court has held as under:

" A latest decision of this Court in Joginder Pal Vs. Naval Kishore Behal reported in 2002(5) SCC 397: 2002 SCFBRC 388, to which one of us (R.C.Lahoti,J.) was a party takes the same view. In fact, this judgment contains a detailed resume of the entire case law on this point and holds that the expression for "his own use" occurring in Section 13(3) (a)(ii) (a) of the East Punjab Urban Rent Restriction Act, 1949 has to be liberally construed and should be given a wide and useful meaning rather than a strict and narrow construction. The requirement of a member of family of the landlord who is dependent on the landlord for purposes of residence or for economic consideration can be considered as a requirement of the landlord."

In the case of Bega Begum 1979 A.I.R. SC page 272 the Apex Court has observed that in case of eviction in every case, the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observation of the Apex Court are quoted below:

Paragraph 13- "Moreover, section 11(1) (h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine

need as nothing but a desire as the High Court has done in this case. It seems to us that connotation of the term 'need' or 'requirement' should not be artificially extended to its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need."

Paragraph – 19 " In this connection out attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section 11(1)(H) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs a decree for eviction."

Paragraph 26 " Thus, on a careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is titled in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately to weighed the eviction from that point of view."

Paragraph 28. " For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed

against the defendants. In the peculiar circumstances of this case, there will be no order as to costs."

Following the decision of Bega Begum, in the case of N.S.Dutta Vs. VIIth Additional District Judge, Allahabad, 1984 ARC (1) page 113, it has been held as below:

" The expression "bona fide required" appearing in the context of Section 21 (1) (a) has received judicial interpretation in various pronouncements. The assessment has to be objective depending upon the facts and circumstances of the case. The word "required" it was pointed out in Mattu Lal Vs. Radhey Lal A.I.R. 1974 SC 1596, signifies that mere desire on the part of the landlord is not enough, but there should be an element of need and the landlord must show that he genuinely required non-residential accommodation for purposes of starting or continuing his own business(See also Ajit Prasad Vs. IVth Addl. District Judge, Meerut, 1979 ARC 73). The need of the landlord does not, however, have to be shown as absolute. In Smt. Gindori Devi Vs. IInd Addl. District Judge & others, 1979 (UP) RCC 599, at page 601, it was held:-

" It would suffice to mention that a person is said to need a premises bona fide if he requires it honestly. Similarly, the word "required" has also been interpreted in several cases, and the connotation of the said word shows that the landlord must need the premises. In order to succeed in such an application, it is not necessary that the landlord must be on the streets. The connotation of the word "need" or "requirement" should not be unnecessarily or artificially extended so as to give it a meaning that a landlord cannot get a premises released unless his requirement is absolute. No doubt, the question of need of a landlord is to be decided objectively and its decision should not be based on the ipse dixit of the landlord, but that does not mean that he must stand on extreme need before he could succeed."

In Tej Kumar Vs. Additional District and Sessions Judge, Hardwar and others – 1994 ARC 117, following the aforesaid two decisions (Bega Begum and others Vs. A.A.Khan and others (1979 (1) SCC 275) and N.S. Dutta Vs.

VIIth Additional District Judge, Allahabad, 1984 ARC (1) page 113), it has been held as under:

> " The inaction of the tenant to search for an alternative accommodation, as already indicated hereinbefore, constitutes an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bona fide requirement for the release stands conclusively established."

In Tej Kumar Vs. Addl. District Judge, Hardwar (supra) following observations have also been made:

> "There could be no manner of doubt that the release contemplated under section 21 (1)(a) of the Act can be granted for setting in a new venture of the unengaged member of a family. There is nothing in the Act or policy underlying it, which may lead to any inference contrary to it. In the present case, the bonafide need of the disputed shop was the need to settle Pradeep Kumar in a independent business. The need to set up a son in an independent business has always been recognized as bonafide and genuine. Even if some members of the family are engaged in the business that cannot be an impediment for the grant of release of the accommodation for enabling the unemployed or unengaged member of the family to start business of his own or for augmenting income as each adult member of the family is entitled to work for his own independent existence and is further entitled to chose a vocation suiting his individual aptitude, education and qualification. Further there could be no manner of doubt that such release can also be granted to provide a source to augment the income of a family member so that he may lead a descent life and cater to the need of his growing family."……
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> This Court in its decision in the case of N.S.Datta and others Vs. VIIth Additional District Judge, Allahabad and others, reported in 1984 (1) ARC 113, had observed that the proviso in question requires a mandatory regard being had to the advantages or disadvantages either in the event of the application for release being allowed or otherwise but each party was required to adduce evidence to show that hardship could be caused to him by grant or refusal of the release

of the building under tenancy and that the tenant must also adduce evidence to the effect that other reasonable accommodation was not available to him. It was further observed that the Court is entitled also to take into account the fact that the tenant has neither alleged nor proved to have made effort to have an alternative accommodation and that non-availability of alternative accommodation to the tenant is not in itself an adequate ground to reject the landlord's application for release. In its decision in the case of Dr. Munni Lal Vs. IVth Additional District Judge, Etah and others reported in 1984(1)A.R.C. 378, this Court has clarified that the fact that nothing is brought on record indicating that the tenant had made any effort during the period of the pendency of the release application for getting some accommodation allotted in his favour or otherwise or that he had failed in his attempt is a relevant circumstances while considering the question relating to comparative hardship. Taking into consideration the scheme of the Act, I am of the firm opinion that such an inaction on the part of the tenant constitutes an additional circumstance which entitles the landlord to have a preference shown to him while striking the just balance between the genuine need of the landlord on the one hand and the likely inconvenience or trouble of the tenant on the other. It may further be borne in mind that the use of the phrase "having regard to" as envisaged under the fourth proviso to section 21 of the Act would clearly show that this provision was not obligatory. The factors mentioned in Rule 16 of the Rules, should, however, have to be kept in mind while deciding the release application. No single factor can be held to be conclusive. As observed in its decision in the case of Mohd. Muslim Vs. District Judge Varanasi and others, reported in 1978 ARC 328, it is the cumulative effect of all that has to be seen. The inaction of the tenant to search for an alternative accommodation, as already indicated hereinbefore, constitutes an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bona fide requirement of the release stands conclusively established.

Considering the facts and circumstances of this case, the findings recorded by the Appellate Authority on the question relating to the bona fide need and relative hardship which findings are based on appraisal of evidence and the materials on the record do not appear to suffer from any such legal infirmity which may justify interference therein while exercising the

extraordinary jurisdiction envisaged under Article 226 of the Constitution of India. Moreover, no justifiable ground has been made out for the intervention of the equity in the ultimate conclusion on the above aspects as reached by the Appellate Authority."

The Apex Court in the case of G.C.Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541 has rightly pointed out the plight of a young man to settle in the business. The observations of the Apex Court in para 13 and 14 of the judgment are quoted below:

"13. Another reasoning of the Courts below is that as Rohit did not start the business between the year 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. No starting the business in a rented premises during the above-mentioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in Gaya Prasad Vs. Pradeep Srivastava, 2001 (2) SCC 604 : 2001 SCFBRC 128, relying on early decisions of this court held that the crucial date for deciding as the bona fide of requirement of the premises in question for starting clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined provincial medical service and was posted at different places. The Court refused to take notice of the subsequent event holding that crucial date was the date of filing of the eviction petition.

14. The Courts below completely overlooked clause (d) of sub-rule (2) of Rule 16 of the rules while deciding the eviction petition. From the rule extracted earlier, the Court has to ascertain whether the son of the landlord has completed technical education and is not employed in the Government and wants to engage in self-employment. All the criteria laid down in the said clause have been proved and therefore, appellant is entitled to get the decree for eviction."

Discussion on the requirement of an Advocate

It is well settled that Advocate requires at least three rooms for running his chambers. In the matter of Gurucharan singh and another Vs. N.P.Agarwal and others 2001 (1) Alld. Rent Cases page 607, it has been held as under:

> "The tenanted accommodation as described above, comprises of two shops and two adjoining rooms. The need of the landlords to occupy the said accommodation cannot be said to be fanciful or imaginary. It is bona fide and honest, insofar as to relates to the settlement of Anurag Agarwal in share business and Smt. Rajni Agarwal, wife of Sandeep Agarwal in establishing a chamber for legal profession. Capital was sought be made on the point that the husband of Smt. Rajni Agarwal is posted at Lucknow and there appears to be no reason why Smt. Rajni Agarwal should stay away from her husband. It was also obliquely suggested that she is not in active practice as an Advocate at Kanpur. Thre is enough material on record to suggest that he is staying at Kanpur with her in-laws and brother-in-law as her husband I posted at Lucknow on a transferable post. The children of Smt. Rajni Agarwal are admitted in Kanpur. Lucknow is a place not far way from Kanpur and Sandeep Agarwal is in a position to visit Kanpur off and on after office hours or on holidays. Now he has come back on transfer to Kanpur to live with his parents and wife. The President Bar Association of Kanpur has issued a certificate that Smt. Rajni Agarwal is enrolled as an Advocate and is, in fact, engaged in legal practice. The details of the cases in which Smt. Rajni Agarwal has put in her appearance before the various courts in Kanpur as an Advocate have been given. There is substantial material on record to prove the fact Smt. Rajni Agarwal is in active practice. A practicing Advocate undoubtedly is required to have a separate office which may have enough space to hose a library, record room to accommodate his juniors and clerks besides place consultation with clients and waiting room for the clients. At least two rooms accommodation is the minimum requirement for the purpose."

Further the need of the Advocate has been emphasized in the matter of Prem Nath Bhatia Vs.

Munshi Lal Nigam and others, A.R.C. 1984 (2) 548 as below:

> "For an advocate worth the name I think that at least three rooms are needed and in the present case the status of the family is also good in the society, hence bare necessities of the family cannot be adjusted in the accommodation in question in the light of the ruling reported in 1982 (U.P.) RCC 378: 1982 (2) ARC 45, Kuldip Rai Suri and another Vs. Dr. S.S.Khanna and another, as well as the ruling reported in 1982 (U.P.) RCC 402: 1982 (2) ARC 86, Lakshmi Narain Vs. IInd Addl. District Judge, Aligarh and others, with Kailash Nandan Prasad Vs. Addl. District Judge, Moradabad and others have indicated that " even if a landlord is serving outside or living with his near relatives, but makes casual visits to his house, and thus retains control over the entire or protin of the property, he would in law be deemed to be in occupation of the same." In this view of the matter, I do not find any force in the contention of the learned counsel for the petitioner that the need of the two persons belonging to the family of the landlord where wrongly taken by the Court below while considering the bonafide need and comparing hardship between the landlord and the tenant."

Similar view has been taken in the case of Kuldeep Rai Suri and another Vs. Dr. D.S.Khanna Allahabad Rent Cases 1982 page 45.

Admittedly, the landlord is living alongwith his wife, children and mother and as such the first floor is hardly sufficient for residential purposes. The chamber, therefore, cannot be started by the landlord on the first floor accommodation. The finding of the appellate Court is quoted below:

> "There is no dispute that the landlord has any other premises in his possession than the disputed one. The appellant has remarried. It is also not disputed. Now, on the first floor, which consists of the accommodation as stated above, the applicant/landlord is living alongwith his wife, children and mother, which

is sufficient only for his residential purposes. So, the only accommodation which is available for the applicant/landlord for his library and office is the premises available on the ground floor consisting of disputed shop and the shops under the tenancy of Vinod Kumar and Bundu."

Comparative Hardship:

It has come in the evidence on the record that the tenant is not doing any business in the premises in dispute. However, under the garb of the cloth business, he is doing the money-lending business. Further, he has not made any efforts to find out suitable alternative accommodation. Comparative hardship, therefore, lies in favour of the landlord. It is an established fact that comparative hardship is a relative factor in view of the law laid down in the case of Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad, ARC 1993(1) page 77.

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

" As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the *bona fide* need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word".....

In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272: 1986 SCFBRC 346, the Apex Court had observed that while it was no doubt

true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilised for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one

hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

In Deep Chand Nem Chand Jain and others Vs. The Prescribed Authority, A.D.M.(E), Saharanpur and others, it has been held as under:

"I am not persuaded to accept the contention of Sri S.N.Kackker as a proposition, that if some members of the family of the landlords are found engaged in any business earning profits the building under tenancy ought not to be released for enabling the unemployed or unengaged members of the family to start business of their own in that building merely because the family as a circle or until has some existing business engagement. In my view, each adult ought to be legitimately entitled to work for his own independent existence and sustenance. He is entitled to choose a vocation or profession suiting his individual aptitude, education or qualification, capabilities and so forth. The need of such an unemployed member cannot, in my judgment, be telling him that he must follow the line or profession of the other members of the family or try to get absorbed in the business already carried on by the family. Ofcourse, such a need of the landlords will have to be balanced against the hardship likely to be caused to the tenants from the grant of application.

To my mind, the fact that under section 21(1) of the Act, the release can be had for the benefit of the landlord's family members also is not adequate ground for holding that the release of the building cannot be asked for setting in a new venture of the unengaged member of the family. I find nothing in the Act or the policy underlying it which may countenance the broad proposition canvassed by Sri S.N.Kackker."

It has been held in Rameshwar Sahi Mathur Vs. District Judge, Dehradun reported in 2004 (1) Allahabad Rent Cases page 177 as under:

> "Further the tenant cannot dictate the landlord as to how he should use the accommodation as held in the case of Sardar Pritam Singh through LRs. Vs. Sardar Prakash Singh and others in 1999 (2) A.R.C P-338. The observations are quoted below:-
>
> > Paragraph 18- "Learned counsel for the petitioner then referred to the decision reported in, 1996 (1) AWC 409. View taken in the decision reported in, 1990 AWC 1508, has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he should live and the need of the landlord must be commensurate with his statuskeeping in mind his need both qualitatively and quantitatively."
> >
> > Paragraph 21- " No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation."
> >
> > Paragraph 23- "Writ petition allowed. Petitioners may approach the Prescribed Authority (respondent no.2) to deliver the possession as contemplated under the Act. There will be no order as to costs."

In the case of Rameshwar Sahi Mathur (supra) in paragraph 38 observed as under:

> " It admits of no doubt that recording to clause (a), sub-ule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building less the justification for allowing the application but at the same time, having regard to overall facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bona fide requirement of the landlord

cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in clause (b) Sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the perils of substantial loss thre shall be greater justification for allowing the application. The expression "available with him" in this sub-rule dies not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretches. Rajendra Kumar Gupta Vs. Gupta Krishan and others, AIR 1995 Alld. 82 1994(2) ARC 11, it has been held by Sudhir Narain J and I concur with the view taken therein in that "one of the Principles for considering comparative hardships on the parties is to find out as to whether the tenant had made a sincere effort to find out alternative accommodation and has placed materials before the authorities to come to their conclusions that he made such an effort." The fact that earlier applications for release met the fate of rejection some 10 years ago, could not be projected backward to operates an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitably, landlord Sanjai Gupta did his M.A. after rejection of earlier applications and his failure to secure employment for himself, lends cogency to his moving the present application.'

Reliance was placed on the judgment of Sudha Agarwal; Vs. Xth A.D.J. Varanasi reported in ARC 1999 (2) 440, by the learned counsel for the petitioner. In that case, it has been held as under:

" A perusal of section 31(1) (a) shows that a landlord can succeed in his application for eviction of a tenant if he establishes before the Prescribed Authority that his need for the premises is bona fide. Fourth proviso of section 21(1) provides that the Prescribed Authority, while considering the bonafide requirement of the landlord has also to take into account the likely

hardship to the landlord from the refusal of the application excepting in case provided for in Explanation (i). Explanation (i) provides that where the tenant or any member of his family who is normally residing with him or wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, no objection by the tenant against an application under this sub-section shall be entertained. The aforesaid provisions extracted above show that in cases where Explanation (i) is applicable no presumption can be raised with regard to the need of the landlord as bona fide. The only effect of application of Explanation (i) is that the tenant is not entitled to contest the application filed by the landlord and the Prescribed Authority is not required to compare the hardshp of the landlord with that of the tenant which he otherwise required to do under fourth proviso of section 21(1) of the Act."

The aforesaid judgment has no application to the present case, inasmuch as the Courts below have recorded the bonafide need and comparative hardshp in favour of the landlord. The case law reported above has also no application in the present case as it is not a case of Explanation 1 but it is a simple case of S.21 (1)(a), where applying the provision, the authorities concerned have decided the case on the basis of the bona fide requirement of the landlord.

So far as his comparative hardship is concerned, in order to mitigate the hardship to the tenant, if any, the award of two years rent as well as sometime to vacate the premises will serve the requirement.

Rule 16 of Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, It has

been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

> " A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

Interference under Art. 226 of the Constitution of India

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 S.C.C. 682 as below:

"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- " considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

Conclusion:

A perusal of the record shows that it is not a case where part release shall serve the purpose of the landlord. Rule 16 (1)(d) of the rules provides as under:

"(d) Where the tenant's need would be adequately met by leaving with him a part of the building under tenancy and the landlord's needs would be served by releasing the other part, the prescribed authority shall release only the latter part of the building;"

From the facts of the case, it does not appear that the part release shall serve the purpose of the landlords. The landlord has been able to prove the bona fide need of the accommodation.

Moreover, no restrictions can be placed on the rights of the landlord. In the present case landlord has sufficiently proved the bona fide need and comparative hardship and as such there is no impediment in allowing the release application for the entire premises. It appears that the landlord requires the premises according to his own status.

The Apex Court in the case of Bhimanagouda Basanagouda Patil Vs. Mohammad Gudusaheb reported in 2003 SCFBRC 250 has held as under:

> "For the reasons, we are of the opinion that the comparative hardship that may be suffered by the landlord will be greater than that of the tenant, and what little hardship that may be suffered by the tenant on facts of the case can be mitigated by granting him two years' time to vacate the suit schedule premises."

Both the Courts below having recorded the findings of fact by holding that the landlord requires the premises for Chamber purposes, and the comparative hardship lies in his favour, I do not find any infirmity in the order passed by the Courts below. However, the petitioner will be entitled to an amount of compensation equivalent to two years of rent as compensation as provided in proviso to section 21 of the Act No. XIII of 1972.

The writ petition is dismissed. No order as to cost.

However, time is granted upto 31st of January, 2005 to vacate the premises provided an undertaking is given in the following terms by the petitioners:

(i) to vacate the premises by 31st of January 2005.

(ii) to pay entire damages for use and occupation upto 31st January, 2005 by 30th November, 2004

(iii) The undertaking shall be furnished by 30th November, 2004.

(iv) In case of default the decree for eviction shall be executed forthwith.

(Rajesh Tandon, J.)

October 15, 2004.
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HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 154/2003 M/S

Niranjan Singh Wasu

Vs.

The District Judge,

Dehradun and others

Approved for reporting.
~~Not approved for reporting~~

Date of decision 15-10-2004

Initial of Judge